

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Jean-François Bonfanti, et al.

Patent No. : 7,449,463

Issue Date : November 11, 2008 Confirmation No.: 2936

Serial No. : 10/563,691 Art Unit: 1624

Filed : January 4, 2006 Examiner: Zachary C. Tucker

For : MORPHOLINYL CONTAINING BENZIMIDAZOLES AS
INHIBITORS OF RESPIRATORY SYNCYTIAL VIRUS
REPLICATION

**I hereby certify that this correspondence is being transmitted via
The Office electronic filing system in accordance with 37 C.F.R. 1.6(a)(4)**

January 5, 2009

(Date)

Jennifer Rishko

Name Declarant

/ Jennifer Rishko/

(Signature)

January 5, 2009

(Date of Signature)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705(d)

Dear Sir:

This is a Request for Reconsideration of the Patent Term Adjustment for the above-referenced patent. This Request for Reconsideration is being submitted within two months of the issue date (November 11, 2008) of United States Patent No. 7,449,463.

Statement of the Facts:

When the Notice of Allowance for the above-referenced application was mailed on March 19, 2008, a determination of Patent Term Adjustment under 35 U.S.C. §154 (b) of 381 days was communicated to Applicants. Applicants filed an amendment under 37 CFR §1.312 on June 19, 2009 (the “312 Amendment”) and Applicants received an Office communication mailed July 9, 2008 entitled “Response to Rule 312 Communication” which indicated that the amendment filed on June 19, 2008 had been considered and entered by the Examiner. In addition, on July 18, 2008, Applicants received an Office communication entitled “Supplemental Notice of Allowability” indicating that Claims 29, 31, 35, 37-41, 43-49, 51, 53-57, 59-65 and 67-71 had been allowed and that a claim for foreign priority acknowledged. Upon issuance of the patent, the patent term adjustment was reduced by 120 days due to Applicants’ delay caused by filing the 312 Amendment (37 CFR 1.704(c)(10)). However, according to 37 CFR §1.704(c)(10), the length of the reduction should be the lesser of: (i) the number of days beginning on the date the 312 Amendment was filed and ending on the mailing date of the Office action or notice in response to the 312 Amendment, or (ii) four months (120 days). Since a response to the 312 Amendment was mailed on July 9, 2008, the amount of the reduction should only have been 20 days rather than 120 days.

Patentees submit that the correct patent term adjustment should be 384 days calculated as follows:

The period of adjustment of patent term due to examination delay under 37 CFR §1.703 is 404 days: 381 days [1.703(a)(1)] plus 23 days [1.703(a)(6)];

The reduction of period of adjustment of patent term under 37 CFR §1.704 is 20 days [1.704(c)(10)] which is the lesser of four months or the number of days beginning on the date the amendment under 1.312 was filed (i.e., June 19, 2009) and ending on the mailing date of the Office action or notice in response to the amendment under 1.312 (i.e., the Office communication mailed July 9, 2008 entitled “Response to Rule 312 Communication”);

404 days minus 20 days equals a Patent Term Adjustment of 384 days.

Alternatively, if for some reason the Office communication mailed July 9, 2008 entitled “Response to Rule 312 Communication” is not considered to be an “Office action or notice in response to the amendment under §1.312”, then the Office communication entitled “Supplemental Notice of Allowability” mailed July 18, 2008 would be considered an Office

action or notice in response to the 312 Amendment wherein the amount of the reduction would have been only 29 days instead of 120 days. In this instance, a corrected patent term adjustment of 375 days is warranted which is calculated as follows:

The period of adjustment of patent term due to examination delay under 37 CFR

§1.703 is 404 days: 381 days [1.703(a)(1)] plus 23 days [1.703(a)(6)];

The reduction of period of adjustment of patent term under 37 CFR §1.704 is 29 days [1.704(c)(10)] which is the lesser of four months or the number of days beginning on the date the amendment under 1.312 was filed (i.e., June 19, 2009) and ending on the mailing date of the Office action or notice in response to the amendment under 1.312 (i.e., the Office communication mailed July 18, 2008 entitled “Supplemental Notice of Allowability”);

404 days minus 29 days equals a Patent Term Adjustment of 375 days.

U.S. Patent 7,449,463 is not subject to a terminal disclaimer.

Please charge the fee set forth in 37 CFR §1.18(e) to Deposit Account No.: 10-0750/TIP-0064USPCT/MAA.

The Commissioner is hereby authorized to charge any additional fees which may be required to Account No. 10-0750/TIP-0064USPCT/MAA.

Respectfully submitted,

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